There were, in my view, certain unsatisfactory features of the case which rendered it unsafe not only to convict but which did not justify the respondent being called on for his defence.

The evidence was not sufficient, in my opinion, to bring the respondent within the provisions of section 8 of the Ordinance so as to enable the prosecution to invoke the aid of the presumption.

Section 8(1) of the Ordinance is as follows:—

"Any person accepting or receiving bets, stakes, or wagers or found in possession of any books. accounts, documents, telegrams, writings, circulars, cards or other articles which are used or appear to have been used or intended to be used in connection with or which relate or appear to relate to the business of a bookmaker shall be presumed until the contrary is proved to be acting as a bookmaker."

The learned magistrate in his grounds of decision said this:

"The prosecution in this case seeks to rely on section 8(1) of Ordinance 30/60. However, in my opinion, the word 'bookmaker' in this presumption must be read within the ambit of the definition of 'bookmaker' in section 2(1) of the Ordinance. In my view, time is of the essence in a charge of this nature, and a person cannot be said to be a bookmaker within the said definition once the races are over for the day. For example — to stretch a point — a person cannot be charged with bookmaking at 12 midnight because there will be no bets which a person can receive or negotiate, nor is there any question of his holding himself out as a bookmaker, unless there is evidence that a person can continue to be a bookmaker within the definition of 'bookmaker' even after the races are over."

With respect to the learned magistrate I am unable to agree. Time is not of the essence of the matter in a charge of this nature.

Once possession is established the time factor is immaterial and irrelevant in so far as raising the presumption is concerned. The section refers to possession of documents or other articles which are used *or appear to have been used or intended to be used* or which relate or appear to relate to the business of a bookmaker. The person so found in possession is presumed until the contrary is proved to be acting as a bookmaker within the definition in section 2 of the Ordinance.

Similarly under section 8(2) any person who settles or pays money in respect of bets or wagers relating to a horse race is presumed until the contrary is proved to be acting as a bookmaker within the definition in section 2 of the Ordinance. Settling day may be and often is on a day subsequent to a race day.

Construing the section as a whole it seems to me to be clear that time is not and was never intended to be of the essence of the charge as found by the learned magistrate.

Appeal dismissed.

Solicitors: *Ironside & de Souza.*

SONG TIN KUI v. PUBLIC PROSECUTOR

[A.Cr.J. (Ali J.) October 1, 1965]

[Ipoh — Perak Criminal Appeal No. 21 of 1965]

Criminal Law and Procedure — Sentence — Necessity to record reasons if sentence less than mandatory one is imposed — Betting Ordinance, 1953, s. 6(3)(a).

Section 6(3) of the Betting Ordinance, 1953, provides that upon conviction for an offence thereunder the accused shall be liable to a fine which shall not be less than two thousand dollars unless the court for reasons to be recorded by it thinks fit to order otherwise. In this case the accused was found guilty of an offence under section 6(3) of the Betting Ordinance and fined $500 but the record of the trial did not state the reasons for the sentence. The appellant appealed against his conviction and sentence.

Held: the appeal against conviction was without merits and must be dismissed but as no reasons were given for the sentence at the trial in this case, the fine must be increased to the mandatory one of $2,000.

MAGISTRATE'S CRIMINAL APPEAL.

R. C. M. Rayan for the appellant.

Haji Suhaimi (Deputy Public Prosecutor) for the respondent.

Ali J.: This was an appeal against conviction and sentence for an offence under section 6(3)(a) of the Betting Ordinance, 1953. The appeal against conviction being without merit was dismissed leaving for consideraton only the question as regards sentence. Section 6(3) of the Ordinance expressly provides that upon conviction for an offence thereunder the accused shall be liable to a fine which shall not be less than two thousand dollars (unless the court for reasons to be recorded by it thinks fit to order otherwise). The record of the trial, so far as it is relevant to this question, merely showed thus:—

"Accused found guilty and fined $500 in default 3 months."

Properly construing this section, it seems to me that the Legislature had thought it fit to provide as a minimum a sentence of a fine of not less than $2,000 upon conviction for an offence as a book-maker. In the exceptional case, however, the trial magistrate may impose a lesser sentence if, having regard to any extenuating circumstances, he considers it reasonable to do so. But the law requires as a condition precedent that before proceeding to do so (not after) he must record his reasons. Generally speaking, a presiding magistrate is assumed to have reasons for taking a particular course of action during a trial. Although as a matter of prudence it is desirable that he should record these reasons at the trial itself, the law does not strictly require him to do so. In this particular case, however, it is expressly required by statute that these reasons must be recorded during and not after the trial. The learned deputy was, however, of the view that it was sufficient, as had been done

here, for the reasons to have been stated in the grounds of judgment. With this view I am unable to agree for, in terms of the provision of sub-section (iii) to section 307 of the Criminal Procedure Code, the grounds of decision are only required to be made after a notice of appeal has been lodged. Proceedings which occurred after notice of appeal has been lodged do not form part of the trial itself. In the event, the sentence of the court below was varied and substituted with a sentence of a fine of $2,000. As the appellant had already paid $500 there will be an order, on an application made by him, that the balance of $1,500 be paid by instalment of $250 each with effect from the 1st October, 1965, upon the execution of the usual bond with two sureties by the appellant.

Sentence of court below varied.

THAMBIAH v. THE QUEEN

[P.C. (Lord Reid, Lord Morris of Borth-Y-Gest, Lord Hodson, Lord Pearce and Lord Wilberforce) October 7, 1965]

[Privy Council Appeal No. 9 of 1963]

Criminal Law and Procedure — Evidence — Volunteered statement — Accused in custody — Statement between interrogations — Not in answer to questions by police — Whether made in course of police investigation Criminal Procedure Code (Ceylon), s. 122(3).

The appellant and four others were charged with conspiracy to make fraudulent use of two forged cheques. After the commencement of investigations but not during any actual interrogation or in answer to any question the appellant told a police officer while they were climbing stairs to his office that he had signed a certain letter (which was signed with the name "H.B. Mendis") and that he had written several signatures of "H.B. Mendis" on two pieces of paper that were found in his possession when he was arrested. When he volunteered this information the appellant was in custody and he was interrogated both before and after they climbed the stairs. The appellant was convicted of abetting another accused in fraudulently using as genuine one of the two forged cheques and his appeal to the Supreme Court of Ceylon against this conviction was dismissed. One of the two grounds of his appeal to the Judicial Committee of the Privy Council was that evidence of his statements was admitted contrary to the provisions of section 122(3) of the Ceylon Criminal Procedure Code the material part of which reads, "No statement made by any person to a police officer or an inquirer in the course of any investigation under this Chapter shall be used otherwise than to prove that a witness made a different statement at a different time or to refresh the memory of the person recording it."†

Held: the statement is inadmissible as being a "statement made by any person to a police officer or an inquirer in the course of any investigation" under Chapter XII of the Ceylon Criminal Procedure Code. To hold that information volunteered at any time between the beginning and end of the investigation may be excluded from the protection of section 122 would in practice defeat the purpose of the section and encourage the mischief against which it is clearly aimed.

[Editorial Note: The other ground of appeal was that there was no sufficient evidence to support the conviction but the observations of the Judicial Committee on this ground are not reproduced in this report.]

Cases referred to:—

(1) *R.* v. *Ramasamy* [1965] A.C. 1; [1964] 3 W.L.R. 632; Noted in [1965] 1 M.L.J. at p. ix.

(2) *R. v. Harmanisa* (1944), 45 N.L.R. (Ceylon) 532 at p. 537.

PRIVY COUNCIL.

E. F. N. Gratiaen, Q.C. and *Dick Taverne*, Q.C. for the appellant.

Mark Littman, Q.C., *Tom Kellock*, Q.C. and *E. Cotran* for the respondent.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by,

Lord Pearce (referred to facts proved by other witnesses which showed conclusively the appellant's intention to open by fraudulent means an account at a bank for another accused under the assumed name of 'Piyadasa' and a false description, an intention which in due course he achieved. This accused presented one of the cheques in question for payment into the account but upon suspicions being aroused he vanished from the premises. His Lordship continued):

In addition to the above matters, there was evidence that some time previously the appellant had made enquiries about opening an account at another bank (the National and Grindlay's Bank), and there was found in the possession of the fourth accused, the forger, a typed letter vouching a Mr. Piyadasa for the purpose of opening an account at that bank. This letter was signed "H.B. Mendis" but Mr. Mendis who was a customer of the bank had not in fact signed it. The appellant admitted to the police that he had signed this document, and he admitted also writing several signatures "H.B. Mendis" on two pieces of paper that were found in his possession when he was arrested. These admissions were given in evidence.

At the time of the trial there was some authority which appeared to justify the reception of these admissions. But the case of *R.* v. *Ramasamy* (1) has subsequently shown that these admissions should have been excluded. The objection at the trial was based on the ground that the admissions were confessions made to a police officer and as such inadmissible under the Evidence Act section 25(1); but the court held that they were not confessions*. Before their Lordships the only point taken with regard to the admissions was that on the authority of *R.* v. *Ramasamy, supra*, they were inadmissible by

† These provisions appear in Chapter XII of the Ceylon Code which corresponds to Chapter XIII of the Singapore and Malay States Criminal Procedure Codes. See sections 121(1) and 113(i) of the Singapore and Malay States Codes respectively.

* See *Anandagoda* v. *R.* [1962] M.L.J. 289; [1962] 1 W.L.R. 817.